IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 471 of 2007()

CRMP.8465/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA
CRIME NO.1011/06 OF PATHANAMTHITTA POLICE STATION

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PETITIONER:

JOSE JOHN, AGED 46 YEARS,
S/O. JOHN, RESIDING AT OTTAPLACKAL VEEDU,
NARIYAPURAM MURI, VALLIKODE, KOZHENCHERRY,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.471 OF 2007

Dated this the 23rd day of February, 2007

ORDER

The petitioner claims to be the owner of a mini lorry which is allegedly involved in the illicit transportation of river sand. The vehicle was seized by the police. The petitioner applied for release of the vehicle under Sec.451 of the Cr.P.C. The learned Magistrate, by the impugned order, granted the said request subject to conditions. One of the conditions imposed is that the petitioner must produce bank guarantee for Rs.2 lakhs. The petitioner claims to be aggrieved by the said direction.

2. What is the grievance? The learned Magistrate was obliged to impose such a condition because the learned Magistrate found that on an earlier occasion the vehicle had been released to the petitioner for the identical offence. It is after getting release of such vehicle, that a similar crime has again been committed using that vehicle. In any view of the matter, I am satisfied that the learned Magistrate was justified in imposing onerous and strict conditions for release

of the vehicle.

3. The learned counsel for the petitioner submits that insistence on bank guarantee is virtually depriving the petitioner, a person without sufficient means, of the opportunity to take advantage of the order granting release of the vehicle. Insistence on bank guarantee may not be made. The petitioner may be permitted to make appropriate other guarantee/document available before the learned Magistrate. The petitioner may be permitted to get bonds of sufficient and solvent sureties and claim release of the vehicle, prays the learned counsel for the petitioner.

4. Having considered all the relevant inputs, I am satisfied that it may not be essential to insist on production of the bank guarantee invariably. The petitioner can be permitted to get release of the vehicle on condition that he executes a bond for Rs.2 lakhs (Rupees two lakhs) with two solvent sureties each for the like sum. The learned Magistrate must zealously ensure that the sureties offered are sufficient and solvent by insisting on appropriate safeguards.

5. This Crl.M.C. is, in these circumstances, allowed in

part. Condition No.1 that the petitioner must furnish bank guarantee for Rs.2 lakhs is, accordingly, modified to the above extent.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge